

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS: 07-0143P****Sales Tax****For the Tax Year Ending December 31, 2003**

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ISSUE**I. Tax Administration - Ten-Percent Negligence Penalty.**

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer seeks abatement of the ten-percent negligence penalty.

STATEMENT OF FACTS

The Taxpayer is corporation that was audited by the Indiana Department of Revenue (Department). The audit resulted in an assessment of additional sales and use tax. The Taxpayer protested the imposition of the ten-percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Although given ample opportunity to request a hearing on the protest, the Taxpayer chose not to request a hearing. This Letter of Findings is based on the documentation in the file.

I. Tax Administration - Ten-Percent Negligence Penalty.**Discussion**

The Taxpayer protests the imposition of the ten-percent negligence penalty pursuant to IC § 6-8.1-10-2.1. The Taxpayer argued that the Department should waive the ten-percent negligence penalty because the Taxpayer consistently filed its sales and use tax returns in a timely fashion. The Taxpayer also remitted use tax on some purchases on which no sales tax was charged. The Taxpayer further argued that it was unaware that the specific items on which use tax was assessed were subject to the tax.

45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by

the Indiana Code or department regulations. **Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence.** Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer. **(Emphasis added).**

The standard for waiving the negligence penalty is given at 45 IAC 15-11-2(c) as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Pursuant to 45 IAC 15-11-2(b), the Taxpayer's ignorance of the law and failure to follow the Department's instructions are considered negligence. Therefore, the ten-percent negligence penalty was properly imposed.

Finding

The Taxpayer's protest to the imposition of the ten-percent negligence penalty is denied.